

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Certified  
Residential Real Property Appraiser  
License of Sherry J. Rickard

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Raymond R. Krause (ALJ) on December 15, 2009 at the Office of Administrative Hearings.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Commerce (the Department). Edward F. Kautzer, Ruvelson & Kautzer, Chartered, appeared on behalf the Respondent Sherry J. Rickard.

The Department's Exhibits 1-21 were accepted as evidence without objection. Respondent offered Exhibit 101 which was also accepted into evidence. The OAH record closed at the conclusion of the hearing on December 15, 2009.

**STATEMENT OF THE ISSUES**

1. Did the Respondent violate standards of professional practice, fail without good cause to exercise reasonable diligence in the development of an appraisal, engage in negligence or incompetence in the development of an appraisal, and otherwise engage in acts that demonstrate that she is untrustworthy and unqualified to act under the license granted by the Commissioner of the Department of Commerce (Commissioner) in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 82B.20, subd. 2(6), (7) and (13) (2008); Minn. R. 2808.6000, subp. 3A(1) (2007); Uniform Standards of Professional Appraisal Practice (USPAP) Rule 1-2(e)(i). 1-5(a), 1-5(b) and 2-2(b)(viii); USPAP Ethics Rule- Conduct; USPAP Rule – Recordkeeping; USPAP Competency Rule; and USPAP Supplemental Standards Rule – Fannie Mae?

2. Is Respondent properly subject to discipline by the Commissioner?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On September 5, 1990, the Department issued Respondent a certified residential real property appraiser license, No. 4002160. Respondent had legally been doing appraisal work for several years prior to this. Prior to 1990, residential real property appraisers were not licensed by the state of Minnesota. Respondent has had no prior complaints or disciplinary actions taken by the Department.<sup>1</sup>

2. On September 16, 2008, the Department received a complaint against Respondent from Chase Lending Corporation concerning appraisals that Respondent performed on two properties. Chase had had a review appraisal conducted with respect to the appraisals on the two properties and determined that there were serious errors and omissions and that various statutes, rules, and standards were potentially violated.<sup>2</sup>

3. Thomas Hack, Senior Investigator for the Market Assurance Division of the Department, was assigned to investigate the complaint. Mr. Hack is also a licensed appraiser. Mr. Hack did not perform a review appraisal, but examined the appraisal for violations of statute, rule and standards of professional practice.<sup>3</sup>

4. The first property referred to in the complaint was at 833 Third Street East, St. Paul, Minnesota (the St. Paul property). Mr. Hack found several errors and/or omissions that he felt were the results of carelessness or lack of understanding of the transaction.<sup>4</sup>

5. With respect to the St. Paul property, Respondent, inter alia, failed to report that \$61,000 of the \$280,000 sales price was being refunded to the buyer at closing as noted in the purchase agreement. Respondent failed to report and analyze all prior sales of the property appraised within three years of the appraisal date. Respondent reported incorrect zoning for the property. Respondent failed to note that comparable sale five was not a closed sale as of the appraisal date, and that the closing date was inaccurate. Respondent failed to note and adjust for the fact that comparable sale three had a two car garage. Respondent reported that the market area in which the subject property was located had "stable values," when, in fact, they were declining. Respondent failed to maintain a complete work file containing support for her opinions and conclusions.<sup>5</sup>

6. The second property named in the complaint was at 3345 Park Avenue South, Minneapolis, Minnesota (the Minneapolis property). Mr. Hack investigated the complaint with regard to this property and found several errors or omissions that again,

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<sup>1</sup> Testimony of Thomas Hack and Respondent, Ex. 2.

<sup>2</sup> Test. of T. Hack, Ex. 3.

<sup>3</sup> Test. of T. Hack.

<sup>4</sup> *Id.*

<sup>5</sup> Test. of T. Hack and Exs. 8-15.

he felt were caused by carelessness and inattention to detail or to the standards of professional practice.<sup>6</sup>

7. In developing the appraisal on the Minneapolis property, Respondent, inter alia, reported inaccurate zoning information. Respondent reported a stable market area for the subject property when in fact the area was experiencing a declining trend in values. Respondent noted “commissions of real estate agents” being paid to the buyer without analyzing or disclosing the amount of the commissions. Respondent used comparable sales that were not the closest physically or by location and did not provide an analysis of why she chose them instead of more similar properties and what difference that made to their comparability. Respondent failed to report and analyze seller concessions of \$19,392 for comparable three. Respondent failed to report a previous sale of comparable one within one year of its sale date, as stated in the report certifications.<sup>7</sup>

8. Respondent did not retain all of the documentation of her findings and conclusions in her work file on either property as required by the applicable professional standards.<sup>8</sup>

9. In Mr. Hack’s opinion, some of the errors and omissions in the two appraisals were of a significant nature and would affect the ability to use the appraisal for its intended purpose. He found that other errors, while potentially misleading, would not have affected the value of the appraisal.<sup>9</sup> His investigation did not produce any information to suggest that Respondent intentionally committed the errors and omissions for personal gain or any other reason.

10. Mr. Hack had several phone, email, and office visit exchanges with Respondent. Respondent offered no explanation, analysis, or denial of Mr. Hack’s findings.<sup>10</sup>

11. Respondent does not challenge the basic facts and admits that errors and omissions were made in both appraisals. She contends that they were innocent oversights and were not typical of her past work.<sup>11</sup>

12. Any Findings that are more properly characterized as Conclusions are denominated as such and are incorporated into the Conclusions to follow.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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<sup>6</sup> Test. of T. Hack.

<sup>7</sup> Test. of T. Hack and Exs. 16-21.

<sup>8</sup> Test. of T. Hack.

<sup>9</sup> Id.

<sup>10</sup> Test. of T. Hack, Exs. 4-7.

<sup>11</sup> Test. of Respondent.

## CONCLUSIONS

1. This matter is properly before the Commissioner of Commerce and the ALJ pursuant to Minn. Stat. §§ 45.027, 45.024 and 82B.07. The Department has complied with all procedural requirements and has provided proper notice to Respondent.

2. The Commissioner may impose discipline upon a license holder upon a finding that: (1) the order is in the public interest; and (2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or (3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or (4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.<sup>12</sup>

3. The Commissioner may impose discipline upon a finding that a licensee engaged in a violation of any of the standards for the development or communication of real estate appraisals; failed without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal, or communicating an appraisal; engaged in negligence or incompetence in developing an appraisal, in preparing an appraisal, or in communicating an appraisal; or violated standards of professional practice.<sup>13</sup>

4. The Department has the burden to prove by a preponderance of the evidence that Licensee has violated an applicable statute, rule, or standard of professional practice.<sup>14</sup>

5. The standards of professional practice for purposes of a residential real estate appraiser are contained in the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisers Standards Board of the Appraisal Foundation.<sup>15</sup> The USPAP standards include by reference the standards required by various federal agencies that regulate appraisals.<sup>16</sup>

6. The Department proved by a preponderance of the evidence that the errors and omissions alleged by the Department with respect to the appraisals of the St. Paul and Minneapolis properties violate Minn. Stat. §§ 45.027, subd. 7(a)(4), and 82B.20, subd. 2(6), (7), and (13) (2008); Minn. Rule 2808.6000, subps. 3A(1), 3A(6) (2007); USPAP Standards Rule 1-2(e)(i), 1-4(a), 1-5(a), 2-2(b)(viii); USPAP Ethics Rule, USPAP Competency Rule, and USPAP Supplemental Standards Rule – Fannie Mae.

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<sup>12</sup> Minn. Stat. § 45.027, subd. 7(a).

<sup>13</sup> Minn. Stat. § 82B.20, subd. 2 (5), (6), (7), and (13).

<sup>14</sup> Minn. R. 1400.7300, subd.5.

<sup>15</sup> Minn. Stat. § 82B.02, subd. 12.

<sup>16</sup> Ex. 1, p. 6.

7. An Order imposing discipline is in the public interest.

8. Any conclusions that may be more properly considered findings of fact are denominated as such and are incorporated into the Findings of Fact.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that: the Commissioner impose such discipline as is appropriate.

Dated: December 24, 2009

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Administrative Law Judge

Reported: Digitally Recorded

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Glenn Wilson, Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, (651) 296-2488, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **MEMORANDUM**

The basic facts of this case are not in dispute. Respondent developed and submitted two appraisals at the request of her employer. The appraisals of the St. Paul property and the Minneapolis property were examined by a review appraiser hired by Chase Lending. The review appraiser alerted Chase to a number of problems with the two appraisals. Mr. Hack, an investigator for the Department and licensed appraiser,

also found errors and omissions. Respondent did not dispute that there were errors and omissions. Some of the errors and omissions had a material effect on the conclusions and some did not. The errors and omissions violated various statutes, rules and USPAP standards.

On the other hand, there is no evidence to suggest that the errors were intentional or for personal gain. Also, Respondent has been in the business of appraising for 30 years and has had no previous complaints or disciplinary actions.

Respondent was careless and/or lacked the training to recognize the errors and omissions. Some form of discipline is warranted. Given her long and unblemished past performance, it seems that revocation of her license is excessive, especially since no intimation of willful or fraudulent appraising was alleged. A suspension and order for significant training on USPAP standards would be recommended as an appropriate level of discipline. The Commissioner, however, may have other forms of discipline that he determines are more appropriate.

**R. R. K.**